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November 29, 2005

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: San Pedro Railroad Operating Company, LLC
Abandonment Exemption in Cochise County, AZ
STB Docket No. AB-1081 (SUB-NO 0X)

Dear Mr. Williams:

Enclosed for filing in the above referenced docket is "Statement of Chemical Lime Company in Opposition to San Pedro Railroad Operating Company, LLC's Petition for Exemption."

Please note that this filing contains a verified statement. A copy of the signature page for verification had been included in this filing. An original copy of the verified signature page will follow shortly by mail. Please contact me with any questions regarding this filing.

Sincerely,

Rusty A. Brewer

Enclosures

DC01:431524.1

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1081 (SUB-NO. 0X)

SAN PEDRO RAILROAD OPERATING COMPANY, LLC
-- ABANDONMENT EXEMPTION --
IN COCHISE COUNTY, AZ

STATEMENT OF CHEMICAL LIME COMPANY IN OPPOSITION TO
SAN PEDRO RAILROAD OPERATING COMPANY, LLC's
PETITION FOR EXEMPTION

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Attorney for
Chemical Lime Company

Dated: November 29, 2005

DC01:431132.4

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1081 (SUB-NO. 0X)

SAN PEDRO RAILROAD OPERATING COMPANY, LLC
-- ABANDONMENT EXEMPTION --
IN COCHISE COUNTY, AZ

STATEMENT OF CHEMICAL LIME COMPANY IN OPPOSITION TO SAN PEDRO RAILROAD OPERATING COMPANY, LLC'S PETITION FOR EXEMPTION

Pursuant to the notice issued by the Surface Transportation Board (the "Board) in "San Pedro Operating Company, LLC – Abandonment Proceeding – in Cochise County, AZ," 70 Fed. Reg. 67213 (Nov. 4, 2005), Chemical Lime Company ("Chemical Lime") hereby submits this Statement in Opposition to the Petition for Exemption of Abandonment ("Petition") filed by San Pedro Railroad Operating Company, LLC ("SPROC") on October 17, 2005. As part of this proceeding, Chemical Lime requests that the Board take note of the fact that since June 15, 2005, SPROC has unilaterally ceased service on the line in question, without any regulatory authorization, and without agreement by Chemical Lime.[1] Chemical Lime has suffered, and is currently suffering, considerable damages as a result.

This is not the type of dispute that is appropriate for summary disposition in an exemption proceeding. Chemical Lime relied on representations by SPROC in

[1] SPROC received a letter dated June 10, 2005, from Edward W. Pritchard of the Federal Railroad Administration ("FRA") that recommended that SPROC cease operations on one bridge along the rail segments in question until it repaired the span. However, as the letter itself points out, the FRA does not have authority to order or authorize SPROC to cease operations. Only the Board can grant an abandonment request. SPROC could have made sufficient repairs to continue to operate the line while its abandonment request is pending. It should be ordered to do so immediately.

expending a significant amount of capital to reopen its facility and repair and maintain some of the affected lines. In addition, Chemical Lime has been damaged by SPROC's imposition of an improper embargo. Further, the abandonment will subject Chemical Lime to potential market abuses. Finally, the proposed abandonment has potential free trade consequences. Consequently, the Board should deny the request for exemption and conduct a full abandonment proceeding

I. STATEMENT OF POSITION

A rail line may not be abandoned without prior approval under 49 U.S.C. § 10903. Under 49 U.S.C. § 10502, the Surface Transportation Board ("Board") may exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The Board has consistently held that abandonment transactions may be exempted if the shippers on the line do not oppose the abandonment. However, in this case, the abandonment is opposed by Chemical Lime. In addition, when this matter was previously before the Board, the proposed abandonment was opposed by Sonora - Arizona International, LLC.

The Board articulated the intended purposes of exemption proceedings in Central R.R. Co. of Indiana – Abandonment Exemption, STB Docket No. AB-459 (Sub. No. 2X), pages 11 - 12 (STB Served May 4, 1998). In that case, the Board explained:

> The petition for exemption procedure for abandonment is primarily intended to be used to expedite decisions and minimize regulatory burdens in uncontested or noncontroversial proceedings. It should not be used in proceedings like the one before us where detailed analysis of revenues and

> costs is necessary. Detailed revenue and cost analysis is generally reserved for the application process, which provides for a record building process and for Board analysis by requiring workpapers and other information needed to make an informed decision. This is not a case in which it is clear that revenue from local and overhead traffic is minimal compared to the cost of operating the line. Rather, a detailed analysis of revenue and cost evidence, and the resolution of various issues enumerated above, is required to determine the profit/loss of the line.

For the reasons articulated in Central R.R. Co. of Indiana, the Board should deny the petition in this case, require SPROC to file an abandonment application, and conduct a full abandonment proceeding to adjudicate the fact issues regarding SPROC's revenues and expenses, the true cost of repairs necessary to make the line serviceable, and the economic effects of the proposed abandonment, including the amount of damages due Chemical Lime.

II. IDENTITY AND INTEREST OF CHEMICAL LIME

Chemical Lime, based in Fort Worth, Texas, manufactures lime from limestone, and provides lime-based products and services in plants throughout the United States. One of those plants is in Douglas, Arizona, near the Mexican border. SPROC delivers coal and coke to Chemical Lime's Douglas lime plant (the "Plant") via the Curtiss-to-Charleston and Charleston-to-Paul Spur rail segments.[2] Both coal and coke are essential to Chemical Lime's manufacturing process, and without either one, the plant must be shut down.

In support of its request, Chemical Lime submits as Exhibit A the verified statement of Mark Juszli, Chemical Lime's Vice President of Business Development and Logistics ("Juszli").

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[2] Chemical Lime does not object to SPROC's abandoning the Bisbee-Bisbee Junction and Paul Spur-Douglas segments, which are not necessary to serve its plant or complete a transnational connection at Naco, Arizona.

As explained in the Juszli statement, SPROC informed Chemical Lime on March 22, 2005, of its intent to abandon the rail line in September 2005. Juszli at 2. SPROC maintains that it has "advised Chemical Lime of other transportation options including construction of a transload facility." Petition at 12. However, SPROC has never provided Chemical Lime with any concrete proposal to build such a facility, nor has it offered any financial assistance to construct this facility.[3] Juszli at 2.

On June 6, 2005, when SPROC filed its original petition, Chemical Lime requested a written proposal from SPROC detailing SPROC's plans to offset Chemical Lime's financial damages. Juszli at 3. SPROC did not respond at all until June 30, and then provided only a token offer. Juszli at 3.

On July 22, 2005, five weeks after the cessation of its operations, SPROC made a written proposal to Chemical Lime. Juszli at 2. This proposal proved to be noncompetitive on total freight and handling costs with the transload facility at Deming, New Mexico that Chemical Lime has created on its own. Juszli at 2. Further, while it was suggested orally that SPROC may provide for financial assistance to construct the facility, SPROC required a multiyear commitment to provide the capital. Juszli at 2. The SPROC proposal, however, did not offer any financial assistance to offset the increased freight and handling costs that Chemical Lime would incur as a result of the proposed abandonment. Juszli at 3. Based on recent communications, SPROC does not appear to be pursuing the issue actively. Juszli at 2–3.

Chemical Lime strenuously opposes the abandonment of the two segments that are necessary to serve its plant and facilitate a transnational rail connection in the region.

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[3] SPROC's offer of compensation is only slightly more than the amount Chemical Lime paid to SPROC to subsidize SPROC's repair of the rail line in 2004. SPROC's offer does not attempt to compensate Chemical Lime for construction of a transload facility or for its past, present, and future damages.

Chemical Lime's costs would rise significantly were SPROC to abandon the entire line. Juszli at 3–5. At SPROC's request, Chemical Lime invested significant funds in improving the SPROC tracks leading to Chemical Lime's Douglas Plant. Juszli at 1–2. In reliance on SPROC's proposal to provide continued rail service for the plant's fuel needs, Chemical Lime invested $1.47 million in re-opening the Douglas Plant. Juszli at 1–2. Chemical Lime also advanced funds to SPROC to maintain the rail line segments while Chemical Lime was re-opening the Douglas Plant. Juszli at 1–2. If SPROC is permitted to abandon the line, the harm to Chemical Lime will be greater than the alleged harm to SPROC (which Chemical Lime contests) of continuing service to the Douglas Plant.

III. ARGUMENT

A. The Exemption Procedure is Inappropriate Because Chemical Lime Relied On SPROC's Representations.

In business discussions prior to the reopening of the line, SPROC gave Chemical Lime every indication that it wanted Chemical Lime's business. Juszli at 1. SPROC first approached Chemical Lime to see what Chemical Lime's plans were for its idle Douglas Plant. Juszli at 1. When Chemical Lime indicated to SPROC that it desired to bring the plant back on line, SPROC insisted that Chemical Lime improve the SPROC tracks leading to the Plant. Juszli at 1. Chemical Lime paid a contractor $32,118 in 2004 to do so. Juszli at 2. Chemical Lime also provided cash payments totaling $22,500 to SPROC during 2004 to maintain the track. Juszli at 1. Chemical Lime spent $1.47 million bringing the Douglas Plant back into service. Juszli at 1. SPROC did not indicate until

June 14, 2005, a week after it filed its original petition in this matter,[4] that $500,000 to $600,000 in additional repairs would be needed to bring the line up to operating condition. Juszli at 1-2. If SPROC is permitted to abandon the line, all of the investment by Chemical Lime may be lost because the cost of alternative transportation arrangements by truck may make operation of the plant uneconomical.

This type of reliance has been taken into account by the Board in previous abandonment proceedings. For example, in Tulare Valley R.R. Co. – Abandonment and Discontinuance Exemption – In Tulare and Kern Counties, CA, STB Docket No AB-397 (Sub-No. 5X)(STB served Feb. 21, 1997) ("Tulare Valley"), the Board declared, "[m]oreover, the shipper has shown that it has made a recent, substantial investment in its facilities based on continued rail service and has raised significant doubts as to the availability of viable transportation alternatives."

Further, it is the policy of the Board to promote investment in rail services and to assure future shippers who would invest in rail lines by protecting current shipper investors. See, e.g., Texas and Pacific Ry Co. Abandonment Between San Martine and Rock House in Culberson County, Texas, 363 I.C.C. 666, 677 (Nov. 12, 1980), ("Culberson"). In that case, the STB stated:

> The limited interest of Elcor (the shipper) in being reimbursed pales in comparison to the possible effect this decision could have on the future willingness of shippers and other parties to negotiate with carriers for the construction of rail lines. We have acknowledged that there is a scarcity of resources available to invest in the rail industry. Without investment partners carriers may not be able to make all the desirable investments in rail operations that have the potential of bringing forth good returns. The public would be well served by the construction of new lines or rehabilitation of existing lines with the aid of shipper-investors.

[4] San Pedro Operating Company, LLC -- Abandonment Proceeding -- in Cochise County, AZ, STB Docket No. AB 441 (Sub-No. 4X).

Permitting an exemption in this case would chill future rail investment and growth. Very few shippers would be willing to invest the kind of capital necessary to create and maintain the facilities required for the types of projects like the one at issue knowing that the rail service, and in fact the rail itself, could be unilaterally taken away in a little over a year, without any real scrutiny by the board. As it did in Culberson, the Board should consider "the impact on the entire rail industry" if a rail investor that has a strong interest in continuing service is deprived of that service by the unilateral decision of the owner of the line, and gets no compensation for its damages. Chemical Lime disputes SPROC's assertions regarding its alleged revenues and expenses.

In this case, there are genuine fact and policy issues for the Board to adjudicate, and an exemption proceeding is not the appropriate procedural vehicle to do so. The Board should deny the petition and conduct a full abandonment proceeding to fully and fairly assess the detrimental effects that the abandonment would have not only upon Chemical Lime's investment but also upon the future of rail investment.

B. The Exemption Is Inappropriate Because Chemical Lime Seeks Damages As a Result of SPROC's Improper Embargo

SPROC unilaterally shut down rail service on the subject line on June 16, 2005.[5] This shutdown constitutes an impermissible embargo and a violation of SPROC's common carrier obligation to provide transportation service to shippers.

While embargoes may be permissible in certain cases, unreasonable embargoes are prohibited, and subject the carrier to liability for damages. "The reasonableness of an embargo is determined by a balancing test, taking into consideration such factors as the

[5] During a June 14, 2005 conference call, SPROC unilaterally declared its intent to cease operations immediately. The embargo officially went into effect on June 16, 2005.

length of the service cessation, the carrier's intent, the cost of repairs, the line's traffic, volume and revenues, and the carrier's financial condition." Decatur County Comm'rs. v. Central R.R. Co. of Indiana, STB Finance Docket No. 33386 (September 28, 2000). Usually, the reasonableness of an embargo centers on the length of the service interruption and the cost of repairs to cure the embargo. Overbrook Farmers Union Coop. Ass'n – Petition for Declaratory Order – Violation of 49 U.S.C. § 11101(a), 5 I.C.C. 2d 316, 322 (February 3, 1989) ("Overbrook Farmers").

In its petition, SPROC asserts that the embargo was necessary due to the condition of a bridge at milepost 11.3, and that it will cost $136,496 to repair the bridge. However, the assertions of SPROC's consultants have not been tested and can only be verified or rejected in the context of a full abandonment proceeding. If less costly repairs could have put the bridge in a sufficiently safe condition to allow shipments of coal and coke to Chemical Lime, then SPROC should have made those repairs, rather than instituting the embargo. The Board was confronted with similar facts in Louisiana Railcar, Inc. v. Missouri Pacific R.R. Co., 5 I.C.C. 2d 542, 1989 WL 238865, STB Finance Docket No. 31246 (June 21, 1989). In that case, in reviewing the reasonableness of an embargo, the Board found that the railroad did not need to make $308,000 in repairs to improve the line to Class I standards, as it had asserted, but only needed to make $18,002 in repairs to restore the line to the pre-embargo acceptable track standards.

In this case, Chemical Lime disputes SPROC's estimate of the costs of the necessary repairs, and requests that the true cost of the minimum repairs necessary to reinstitute service be resolved in a full abandonment proceeding. However, even if SPROC's estimates were accepted as correct, the cost of repairing this bridge is still significantly less than the losses suffered by Chemical Lime due to increased shipping costs as a result of the embargo. Juszli at 5–6. Based on the revenue SPROC would have received from Chemical Lime since June 16, it could have recouped almost all of its own estimate of the cost of repairs to the bridge, by the end of 2005, while avoiding causing damages to Chemical Lime. Juszli at 3–4. In view of the fact that the repairs, even at SPROC's estimated cost, would ultimately have been paid for by revenue derived from the continued operation of the line, SPROC has no justification for the embargo.

Since the line has been embargoed, Chemical Lime has been without rail service and has made repeated inquiries about restoration of service. On October 18, 2005, after the Board denied SPROC's June 6, 2005 petition for an exemption, Chemical Lime filed a formal service complaint and request for assistance with the Board. See Juszli at Attachment 1. In response, on October 19, 2005, the Board sent a letter to SPROC instructing it to meet with Chemical Lime to resolve the service issues. See Juszli at Attachment 2. SPROC failed to do so. Juszli at 4. Only after Chemical Lime initiated contact on November 10, 2005, did SPROC offer $75,000 in compensation. Juszli at 4. That sum represents a small fraction of Chemical Lime's losses and is a very small fraction of the profit that SPROC hopes to realize upon liquidating the line.[6] Juszli at 4. Because of its past investment in the line, the damages caused by the improper embargo, and the damages that will be caused if the line is abandoned, Chemical Lime is entitled to

[6] Chemical Lime strongly contests the estimate of liquidation value offered by SPROC and requests that the Board determine the actual liquidation value and compare that value with Chemical Lime's future losses in a formal abandonment proceeding. Also, even if the Board were to find that SPROC's estimate is a realistic assessment of the line's liquidation value, the Board should consider Chemical Lime's reliance on SPROC's representations and Chemical Lime's investment and losses in apportioning the expected profit between the affected parties. See, e.g., Texas and Pacific Ry Co. Abandonment Between San Martine and Rock House in Culberson County, Texas, 363 I.C.C. 666, 678, 1980 WL 14104 (I.C.C.) (November 12, 1980) (awarding damages to the shipper from the liquidation of the rail line to reimburse the shipper for investments made in the continued operation of the line and to promote and encourage investment and construction in rail lines).

share in the proceeds from any future liquidation. The amount of Chemical Lime's share can only be adjudicated in the context of a formal abandonment proceeding.

SPROC's actions violate the legal requirements governing common carriers as articulated in Overbrook Farmers Union Coop. Ass'n – Petition for Declaratory Order – Violation of 49 U.S.C. § 11101(a), 5 I.C.C. 2d 316 (February 3, 1989) ("Overbrook Farmers"). In Overbrook Farmers, the Board found that the Missouri Pacific Railroad Company ("Missouri Pacific") violated its common carrier obligation by not providing "direct rail service or some reasonable substitute" after Missouri Pacific instituted an embargo. Overbrook Farmers at 326. The Board found that Missouri Pacific also violated its common carrier obligation by not granting an allowance that would put its shipper in the same economic position as if it had provided rail service. Id.

Here, SPROC has made no serious attempt to provide a reasonable substitute or to restore Chemical Lime to the same economic position it was in prior to the embargo. SPROC has merely "advised" Chemical Line of potential alternatives to rail transport. Petition at 12. These alternatives have increased Chemical Line's transportation costs by almost 60%. Juszli at 4. To conduct a full review of the validity of SPROC's embargo and to adjudicate the amount of damages payable to Chemical Lime, the Board should deny the Petition and allow the parties an opportunity to present evidence and testimony and brief the issues in a full abandonment proceeding.

C. The Exemption Proceeding is an Inappropriate Vehicle to Prevent Abuses of Market Power

Not only has Chemical Lime suffered past damages due to the improper embargo, but it will also incur future damages due to increased shipping costs. Between June 14, 2005, when SPROC embargoed its line, and December 31, 2005 Chemical Lime will have incurred increased shipping costs for shipping coal and coke estimated to be in the amount of $438,392. Juzli at 5. This increase in cost has occurred due to the increased costs associated with transporting the materials by truck (from Hesperus, Colorado and Gallup, New Mexico) and by rail to a transload facility in Deming, New Mexico and then by truck again from Deming to the Chemical Lime facility in Douglas. Juszli at 4–5. From the time of the improper embargo until the Deming facility was operational, no coke was delivered to the Plant because Chemical Lime's closest provider is in Cheyenne, Wyoming, and it is not economically feasible to transport the coke by truck from that location. Juszli at 4. Once the Deming facility was functioning, Chemical Lime was able to replenish some of the deficient coke inventories. Juszli at 5. The costs associated with doing this, however, have been high. Juszli at 5. In addition, since the improper embargo, because it was forced to ship coal by truck from Hesperus, Colorado, Chemical Lime experienced a coal shortage. Juszli at 4. Chemical Lime has utilized the Deming facility to restore its coal inventories to normal operating levels. Juszli at 4. These mitigation efforts, however, have created a significant financial and operational burdens for Chemical Lime.

With the cessation of service by SPROC, Chemical Lime has been forced to turn to the only two trucking companies in the region that are capable of servicing Chemical Lime's needs. Juszli at 4. Douglas is in a remote area, and there are few competing carriers. Juszli at 4. In addition, the specialized nature of the cargo and high volumes required to meet Chemical Lime's needs prevent many potential truck carriers from competing for Chemical Lime's business. Juszli at 4.

In this case, as discussed above, SPROC compounded the market power problem for Chemical Lime by imposing an improper embargo and failing to meet its common carrier obligations. The absence of an effort on the part of SPROC to provide economically viable alternative transportation service, or to subsidize the increased costs incurred by Chemical Lime, endangers the financial viability of Chemical Lime's Douglas operation. The closing of the line by SPROC seriously limits the potential carriers available to Chemical Lime, subjecting Chemical Lime to potential abuses of market power. Because the abandonment would significantly increase the potential for abuse of market power, the Board should deny SPROC's Petition for Exemption and adjudicate the potential anti-competitive effects of the abandonment in a formal abandonment proceeding.

D. The Exemption Procedure Is Inappropriate For An Abandonment Request That Raises Free Trade Issues.

SPROC states that it acquired the rail segments in question in 2003 with the intent to use them to restore service from the United States to the Mexican rail system at Naco, Arizona. SPROC says, however, that it was not able to persuade the Mexican carrier, Ferromex, to restore the connection. Petition at 8. This assertion is based upon a single attempt by SPROC to negotiate with Ferromex and its owner, Union Pacific Railroad. See, e.g., Reply of San Pedro R.R. Operating Co., LLC to Verified Opposition of Sonora-Arizona Int'l, LLC, San Pedro R.R. Operating Co., LLC – Abandonment Exemption - in Cochise County, AZ, STB Docket No. AB-441 (Sub. No. 4X). At the close of that negotiation, Ferromex concluded that it was not considering restoring transnational service between Mexico and the United States at Naco "at that time." See id. at Exhibit

C. The tenor of Ferromex's correspondence did not indicate that the possibility of future service was foreclosed. In fact, it was quite the opposite. The Ferromex representative stated that other projects were a priority and that SPROC should "keep in touch and with an open mind to opportunities." See id. SPROC's failure in this particular instance to secure an agreement with Ferromex does not mean that such an agreement could never be reached. In the future, SPROC, or some other applicant, may wish to initiate cross-border service using the line that is presently in place.[7]

Now, SPROC wants to abandon its line and dismantle it to recover some value. If the track and associated equipment were liquidated, the cost of renewing service someday in the future would be substantially increased, and such renewal might ultimately be impossible. To allow SPROC to dismantle a rail line crossing the border into Mexico without any evidence in the record examining the international ramifications of such actions would disregard the Board's responsibility to promote the objectives of the North American Free Trade Agreement. See South Orient R.R. Co., Ltd – Abandonment, STB Docket No. AB-545 (STB served Oct. 5, 1998) ("We have also considered the legitimate concerns of protestant about the effect of an abandonment on the local communities, the larger region, and the free trade objectives of NAFTA. We are extremely concerned about maintaining adequate rail facilities and infrastructure. We are also mindful of our

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[7] As a further reason for its exemption request, SPROC states that there are no other shippers on the line . . . that the prospects of attracting other customers to the line are poor . . . [and the] abandonment would have no adverse effect on rural and community development." However, in response to SPROC's June 6, 2005 petition for exemption, Sonora - Arizona International, LLC ("Sonora") filed a well-supported petition in opposition, outlining a number of potential commercial development projects on or near the rail line that SPROC wishes to abandon. In addition to those, Sonora referenced a number of projects, both actual and potential, that could benefit from a transnational connection between the United States and Mexico using the SPROC line. It is evident from Sonora's filing that it, and other potential developers, have an interest in the continued operation of the SPROC line to support these projects, which may have beneficial impacts on the local communities. The Board should fully explore the viability of these potential projects in a full abandonment proceeding.

responsibility to ensure that our actions foster the goal of North American economic integration embodied in NAFTA."). Dismantling an existing, usable track that provides an opportunity for cross-border traffic with Mexico would contradict the goal of North American economic integration.

IV. CONCLUSION AND REQUESTED RELIEF

The proposed abandonment is highly contested, raising serious fact and policy issues. Chemical Lime has made significant contributions to the maintenance of the line in addition to substantial capital improvements to its own facility, all in reliance on SPROC's representations of continued service. In addition, in this case, as a result of SPROC's improper embargo, Chemical Lime has suffered substantial damages. Allowing an abandonment of the line may also subject Chemical Lime to market power abuses and would impede the free trade objectives of NAFTA.

A thorough review of the contested issues will require detailed revenue and cost analysis by the Board. As the Board has explained, these analyses are "generally reserved for the application process, which provides for a record building process and for Board analysis by requiring workpapers and other information needed to make an informed decision." Central R.R. Co. of Indiana – Abandonment Exemption, STB Docket No. AB-459 (Sub. No. 2X), page 12 (STB Served May 4, 1998). Because of the nature of the issues involved and the significant factual and legal determinations that the Board must make, this is not the type of case in which the Board should grant an exemption. Consequently, because this issues are not appropriate for resolution in this proceeding, Chemical Lime requests that the Petition for Exemption be denied.

Respectfully submitted,

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(202) 639-7700

Attorney for
Chemical Lime Company

Dated: November 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail.

November 29, 2005

Rusty A. Brewer
Jeffrey M. Bauer

EXHIBIT A

VERIFIED STATEMENT OF MARK JUSZLI
VICE PRESIDENT, BUSINESS DEVELOPMENT AND LOGISTICS
CHEMICAL LIME COMPANY

My name is Mark Juszli. I am Vice President of Business Development and Logistics for Chemical Lime Company ("Chemical Lime"). The following is my verified statement supporting Chemical Lime's Opposition to the Petition for Exemption to Abandon filed by the San Pedro Railroad Operating Company ("SPROC").

Chemical Lime closed its plant in Douglas, Arizona, in 2001, and reopened it in October 2004. Chemical Lime spent approximately $1.47 million to bring the plant back into service. It is now producing and shipping lime from the Douglas Plant. SPROC provides transportation service to the plant for both coal (at a rate of about 18,000 tons per year) and petroleum coke (at a rate of about 20,000 tons per year), which are used as fuels to fire the plant's lime kiln. Prior to the restart of the Douglas Plant in 2004, Chemical Lime discussed its planned coal and coke consumption rates with SPROC. Since the restart, Chemical Lime has operated the plant in accordance with the consumption rates it discussed with SPROC.

SPROC approached Chemical Lime in early 2004 regarding Chemical Lime's plans for the idle Douglas Plant. It was my understanding that, at that time, SPROC was trying to make decisions regarding the use of its own idle assets. In advance of the restart in October 2004, and at the request of SPROC, Chemical Lime made two financial contributions to the maintenance of the rail line to the Douglas Plant. On June 1, 2004, Chemical Lime agreed to pay SPROC $2,500 per month for the period from March 1, 2004 to December 31, 2004, to help maintain the SPROC line and to cover SPROC's financing costs until Chemical Lime reopened the Douglas Plant. Chemical Lime made nine payments of $2,500 each, for a total of $22,500.

SPROC also required that Chemical Lime pay for improvements to the tracks leading from the SPROC line into the Douglas Plant. Chemical Lime paid Mountain States Contracting $32,118 to clean the tracks of windblown sand, improve drainage, replace crossties, replace tie plates and spikes, add ballast, and level rail.

At the time it requested these financial commitments from Chemical Lime, SPROC did not indicate that any bridge repairs were necessary, or that the railroad was contemplating a request for abandonment. SPROC also did not indicate that the line's continued existence was contingent on SPROC's reaching agreement with Ferromex. To the contrary, in late 2004, after discussing the matter with SPROC Chairman David Parkinson and Chief Executive Officer John H. Dugan, Chemical Lime was optimistic about SPROC's health. This optimism was further confirmed by the comments of David Parkinson in Progressive Railroading magazine (attached hereto as Attachment A).

SPROC first informed Chemical Lime of its intent to file a petition to abandon on March 22, 2005, with a target abandonment date of September 2005. SPROC offered to work with Chemical Lime in building a transload facility in nearby Curtiss, Arizona, to move coal and coke from trains to trucks for transportation to the Douglas Plant. SPROC failed to tender a proposal, however, until July 22, 2005, five weeks after the cessation of its operations. The tendered proposal did not include financial assistance to construct the facility. It was suggested verbally that SPROC would provide some capital for the facility if Chemical Lime made a multiyear commitment. Regardless, the proposal ultimately proved to be noncompetitive on total freight and handling costs when compared to the Deming, New Mexico transload alternative designed and financed by Chemical Lime. At no time has SPROC provided a written offer of financial assistance to construct this transload facility.

While Chemical Lime has proceeded with the Deming, New Mexico transload facility, this alternative has significant commercial uncertainties because BNSF, the principal carrier (the transload site is located on the Southwestern Railroad, a shortline which interchanges with BNSF at Deming), has indicated that it may seek to abandon rail service from Rincon, New Mexico to Deming. If the potential abandonment were to be approved, making the Deming alternative noncompetitive, Chemical Lime would face the prospect of transloading in El Paso, Texas, at a much greater distance. Clearly, the costs associated with transloading in El Paso would be much higher than those associated with transloading in Deming due to increased truck freight distances. In its proposal, SPROC failed to offer any subsidy to Chemical Lime for the increased freight and handling costs due to the proposed abandonment.

On June 6, 2005, Chemical Lime requested a proposal from SPROC as to how it would offset Chemical Lime's financial damages and keep Chemical Lime whole as to the increase of the delivered cost of coal and coke. On June 30, 2005, SPROC offered Chemical Lime $50,000 if Chemical Lime would agree not to oppose its petition for an exemption. That amount is a small fraction of Chemical Lime's increased costs.

During a June 14, 2005, teleconference, SPROC unilaterally declared its intent to cease operations immediately, asserting that the rail line required about $140,000 in bridge repairs and other repairs totaling between $500,000 and $600,000. This was the first Chemical Lime had heard of any such repairs being necessary. At that time, SPROC ceased providing rail service to Chemical Lime. Chemical Lime estimates that if SPROC had made the bridge repairs it claims are needed, and continued providing rail service for the time since the cessation of service, it would have received $133,900 in revenue. This amount almost completely offsets the bridge expenses claimed.

Since that date, Chemical Lime has made repeated requests to SPROC to restore service. These requests were denied. SPROC's unwillingness to restore rail service, even after the Surface Transportation Board ("Board") denied SPROC's June 6, 2005 petition for exemption to abandon, forced Chemical Lime to file a formal service complaint and request for assistance with the Board on October 18, 2005. In a letter to SPROC dated October 19, 2005, the Board requested that SPROC meet with Chemical Lime to resolve these service issues. Copies of those letters are attached. SPROC failed to contact Chemical Lime within the 10 day period required by the Board, and no meeting ever occurred. Having heard nothing from SPROC since the Board's letter, Chemical Lime contacted SPROC on November 10, 2005. This resulted in an oral offer by SPROC of $75,000, a small fraction of Chemical Lime's increased costs.

The Deming transload facility was put into operation on August 23, 2005. Prior to that date, Chemical Lime was forced to transport coal by truck from Hesperus, Colorado and Gallup, New Mexico to Douglas, Arizona at an average transportation cost of $88.17 per ton (the costs differ from Hesperus and from Gallup, but average $88.17). This figure included some backhauls which were difficult for Chemical Lime to organize and manage. In contrast, Chemical Lime paid $50.57 per ton in transportation costs for hauling coal by rail prior to SPROC's cessation of operations. Deming is located in a remote area where only two trucking companies can serve the needs of Chemical Lime. Because of the specialized nature of the materials and the high volumes required, many truck carriers cannot compete for Chemical Lime's business. Since there were only limited trucks available for these long distance hauls, only 1138 tons of coal were transported to Douglas during the 10 week period between SPROC's cessation of operations and the Deming start up. This left Chemical Lime with a coal shortage at its Douglas plant, which it has been restoring to normal operating levels through the Deming facility. However, the freight and handling costs associated with restoring the depleted coal inventories through Deming are much higher than if SPROC had continued to operate.

Additionally, no coke, an essential material to Chemical Lime's manufacturing process, was delivered from the time SPROC ceased operations until the Deming facility was operational, because the coke provider is located in Cheyenne, Wyoming. The cost differential to transport coke by truck rather than rail is estimated to be $60.53 per ton. By the time the Deming facility was operational, coke inventories had reached a critical level. Since that time, Chemical Lime has been restoring coke inventories to normal operating levels. However, the freight and handling costs associated with this process are much higher than if SPROC had continued to operate. Chemical Lime constantly canvasses the coke market and has not identified any suppliers closer to Douglas than Cheyenne. The other suppliers that serve the intermountain Western U.S. are in Montana, Kansas, and East Texas.

Chemical Lime's losses in 2005 alone are estimated to be:

1.	Cash investment in rail spur improvements	$31,118
2.	Nine cash payments to SPROC of $2500	$22,500
3.	Startup costs at Deming (site lease and prep, car shaker)	$33,300
4.	6/15 to 10/21 transport of coal/coke incl. demurrage	$160,819
5.	10/21 to 12/31 transport of coal/coke incl. demurrage (prorated)	$32,757
6,	Transport of coal/coke incl. demurrage to restore inventories	$157,898

Total 2005 $438,392[1]

If Chemical Lime continues to sustain losses of this magnitude, unless rail service is resumed, or some alternative transportation arrangement can be agreed upon, Chemical Lime may be forced to close its Douglas Plant again, losing $1.47 million in startup costs. In 2001, when SPROC's previous owners filed a petition for an abandonment exemption, Chemical Lime did not file an opposition, because the Douglas Plant was shut down due to weakness in demand caused by soft copper markets, and Chemical Lime was unable to predict when the market might improve. Because the plant was closed during 2001, Chemical Lime received no coal or coke between 2001 and the preparations to restart the plant in September-October 2004. Since then, Chemical Lime has been taking delivery of coal at the rate of 18,000 tons per year (180 carloads per year) and coke at the rate of 20,000 tons per year level (200 carloads per year).[2]

The Douglas Plant is budgeted for 15 hourly and 11 salaried employees. Chemical Lime expects about the same staffing levels, with some possible additions, over the next few years. Annual payroll, including fringe benefits, is about $1.3 million. Chemical Lime pays approximately $80,000 per year in property taxes on the Douglas Plant. Chemical Lime

[1] In the Verified Statement of Mark Juszli of July 14, 2005, project 2005 damages were estimated to be $907,780. The current estimate of $438,392 reflects two efforts that Chemical Lime has made since July to mitigate its damages. First, Chemical Lime was successful in permitting and developing the Deming transload facility. The July 14 estimate did not reflect the transportation economics of Deming, the viability of which was uncertain at that time. Second, Chemical Lime has been able to develop lime hauls into southwestern New Mexico which allow approximately 65% of the coal and coke transloaded at Deming to be hauled to Douglas at backhaul truck rates. Backhaul economics were also not reflected in the July 14 estimate, as they also were viewed as uncertain at that time.

[2] In 2004, Chemical Lime received 82 carloads of coal and coke. From January 1 to May 15, 2005, Chemical Lime received 146 carloads. From May 15 until the last car was received on June 13, just prior to SPROC's unilateral cessation of operations on June 16, Chemical Lime received 41 carloads.

also employs a contract miner at Douglas, who currently employs about 18 to 20 people in the mining operation.[3]

Of the four segments SPROC proposes to abandon -- Curtiss to Charleston, Charleston to Paul Spur, Paul Spur to Douglas, and Bisbee to Bisbee Junction -- Chemical Lime is only affected by the Curtiss to Charleston and Charleston to Paul Spur segments, because the plant is at Paul Spur. Chemical Lime does not object to SPROC's abandoning the Bisbee-Bisbee Junction and Paul Spur-Douglas segments.

MARK JUSZLI
Vice President
Business Development and Logistics

[3] The forgoing assumes that Chemical Lime will continue to operate only one of its kilns at the Douglas plant. If Chemical Lime were to restart a second kiln at Douglas, employment and payroll would be increased in addition to an obvious increase in coal and coke requirements.

Surface Transportation Board
Washington, D.C. 20423-0001
October 19, 2005

Office of Compliance and Enforcement
1925 K Street, N.W., Suite 780
Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Sancy M. Parkinson, Executive Director
San Pedro Railroad Operating Company, LLC
15849 North 71st Street, Suite 100
Scottsdale, AZ 85254

Re: Service Complaint by Chemical Lime Company

Dear Mr. Parkinson:

The purpose of this letter is to advise you of the above referenced complaint received by this office from Mark Juszli on behalf of Chemical Lime Company (copy enclosed). The complaint outlines problems being faced by Chemical Lime due to an unauthorized cessation of service by your company, and seeks our assistance in resolving this problem.

As you may know, it is our effort to assist rail customers with service problems and to encourage serving carriers to communicate effectively with their customers on service issues so that the Board does not have to become involved formally in these issues. I must assume that, as an operating railroad company, you are aware that your Common Carrier Obligation does not allow you to discontinue authorized services to shippers without Board approval, and therefore any such discontinuance constitutes a failure of that lawful obligation. As such, I would ask that you meet with Mr. Juszli to try and work through his service issues, and that you advise me within ten days of the actions taken by SPSR to restore service. Failure to do so will leave me no alternative but to recommend to the Board that we institute, on our own motion, a formal complaint proceeding to address the lawfulness of your embargo, the reasonableness of your actions, and the appropriateness of damages to Chemical Lime.

Thank you for your prompt attention to this request and please do not hesitate to contact me if you have any questions.

Sincerely,

Melvin F. Clemens, Jr.
Director

Enclosure
cc: Mark Juszli, Chemical Lime Company

Chemical Lime
A Lhoist Group Company

October 18, 2005

Mr. Melvin F. Clemens Jr.
Director, Office of Compliance and Enforcement
Surface Transportation Board
Suite 780
1925 K St. NW
Washington, D.C. 20423-0001

Dear Mr. Clemens:

I am writing this letter to your office to formally advise and request the support of the Surface Transportation Board regarding a situation where Chemical Lime Company feels that a railroad is not satisfying its common carrier obligation

Chemical Lime operates a production facility in Douglas, AZ. This facility burns a blend coal and petroleum coke as it's primary fuel source. These materials, which together total about 40,000 tons per year of consumption, are transported to the plant by rail. The railroad that services the Douglas plant is the San Pedro and Southwestern Railroad (SPSR).

On June 14, 2005, Chemical Lime was contacted by the principals of the SPSR to inform us of their decision to cease operations serving Douglas on June 15, 2005. The stated reason was the structural integrity of a bridge at milepost 11.3 between Fairbank and Benson, AZ, as revealed in an inspection by the Federal Railroad Administration (FRA). SPSR provided Chemical Lime with a copy of a June 10, 2005 letter received from FRA that stated that the FRA "recommend(s) that SPSR should voluntarily cease operation until these conditions are corrected".

More than four months have transpired since the June 15, 2005 cessation of operations serving Douglas. During this time, the Surface Transportation Board has considered and ruled on the June 6, 2005 petition for exemption for abandonment by SPSR to abandon 76.2 miles of rail line that includes the rail that serves the Douglas facility. The Surface transportation Board ruling of September 15, 2005 denied the petition for exemption, which both Chemical Lime and Sonora-Arizona International, Inc. had formally opposed.

Chemical Lime Company
P.O. Box 985004, Fort Worth, Texas 76185-5004
3700 Hulen Street, Fort Worth, Texas 76107
Phone: (817) 732-8164 (800) 365-6724 Fax: (817) 732-8564

Since the June 15, 2005 cessation of operations serving Douglas, Chemical Lime has maintained a dialogue with the principals of SPSR in an attempt to 1) understand the timing of bridge repairs and restoration of service to Douglas and 2) seek a financial settlement that would allow SPSR to pursue abandonment without Chemical Lime opposition. SPSR has informed us, both prior to and following the September 15, 2005 ruling of the Surface Transportation Board, of their intention not to repair the bridge at this time. Efforts to seek an equitable financial settlement have also been unsuccessful.

More than four months have passed since the June 15, 2005 cessation of operations serving Douglas. More than one month has passed since the Surface transportation Board ruling. Chemical Lime continues to suffer financial damages as a result of the SPSR cessation of operations, as we are having to truck coal and petroleum coke to Douglas at much higher transportation costs than if SPSR was providing rail service.

By this letter, Chemical Lime seeks the intervention of the Surface Transportation Board to restore rail service by the SPSR to the Douglas facility in a timely manner, or to assist Chemical Lime in securing an equitable settlement for financial damages incurred past and future by the SPSR decision to cease activities and not to repair the bridge at this time.

We thank the Surface Transportation Board for its consideration of this matter. If you or a member of your staff should have any questions, please do not hesitate to contact me at 817-806-1509.

Sincerely yours,

Mark P. Juszli
Vice President of Logistics

VERIFICATION

STATE OF TEXAS

CITY OF FORT WORTH

Mark Juszli, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.

Mark P. Juszli

Subscribed and sworn to before me, a Notary Public, in and for the City of FORT WORTH in the State of TEXAS, this 29TH day of NOVEMBER, 2005.

Kathleen M. Reade
Notary Public

My Commission expires:

KATHLEEN M. READE
MY COMMISSION EXPIRES
June 17, 2008

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1081 (SUB-NO. 0X)

SAN PEDRO RAILROAD OPERATING COMPANY, LLC
-- ABANDONMENT EXEMPTION --
IN COCHISE COUNTY, AZ

STATEMENT OF CHEMICAL LIME COMPANY IN OPPOSITION TO
SAN PEDRO RAILROAD OPERATING COMPANY, LLC's
PETITION FOR EXEMPTION

RUSTY A. BREWER
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BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
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Attorney for
Chemical Lime Company

Dated: November 29, 2005

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1081 (SUB-NO. 0X)

SAN PEDRO RAILROAD OPERATING COMPANY, LLC -- ABANDONMENT EXEMPTION -- IN COCHISE COUNTY, AZ

STATEMENT OF CHEMICAL LIME COMPANY IN OPPOSITION TO SAN PEDRO RAILROAD OPERATING COMPANY, LLC'S PETITION FOR EXEMPTION

Pursuant to the notice issued by the Surface Transportation Board (the "Board) in "San Pedro Operating Company, LLC – Abandonment Proceeding – in Cochise County, AZ," 70 Fed. Reg. 67213 (Nov. 4, 2005), Chemical Lime Company ("Chemical Lime") hereby submits this Statement in Opposition to the Petition for Exemption of Abandonment ("Petition") filed by San Pedro Railroad Operating Company, LLC ("SPROC") on October 17, 2005. As part of this proceeding, Chemical Lime requests that the Board take note of the fact that since June 15, 2005, SPROC has unilaterally ceased service on the line in question, without any regulatory authorization, and without agreement by Chemical Lime.1 Chemical Lime has suffered, and is currently suffering, considerable damages as a result.

This is not the type of dispute that is appropriate for summary disposition in an exemption proceeding. Chemical Lime relied on representations by SPROC in expending a significant amount of capital to reopen its facility and repair and maintain some of the affected lines. In addition, Chemical Lime has been damaged by SPROC's imposition of an improper embargo. Further, the abandonment will subject Chemical Lime to potential market abuses. Finally, the proposed abandonment has potential free trade consequences. Consequently, the Board should deny the request for exemption and conduct a full abandonment proceeding

I.STATEMENT OF POSITION

A rail line may not be abandoned without prior approval under 49 U.S.C. § 10903. Under 49 U.S.C. § 10502, the Surface Transportation Board ("Board") may exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The Board has consistently held that abandonment transactions may be exempted if the shippers on the line do not oppose the abandonment. However, in this case, the abandonment is opposed by Chemical Lime. In addition, when this matter was previously before the Board, the proposed abandonment was opposed by Sonora - Arizona International, LLC.

The Board articulated the intended purposes of exemption proceedings in Central R.R. Co. of Indiana – Abandonment Exemption, STB Docket No. AB-459 (Sub. No. 2X), pages 11 - 12 (STB Served

May 4, 1998). In that case, the Board explained:

The petition for exemption procedure for abandonment is primarily intended to be used to expedite decisions and minimize regulatory burdens in uncontested or noncontroversial proceedings. It should not be used in proceedings like the one before us where detailed analysis of revenues and costs is necessary. Detailed revenue and cost analysis is generally reserved for the application process, which provides for a record building process and for Board analysis by requiring workpapers and other information needed to make an informed decision. This is not a case in which it is clear that revenue from local and overhead traffic is minimal compared to the cost of operating the line. Rather, a detailed analysis of revenue and cost evidence, and the resolution of various issues enumerated above, is required to determine the profit/loss of the line.

For the reasons articulated in Central R.R. Co. of Indiana, the Board should deny the petition in this case, require SPROC to file an abandonment application, and conduct a full abandonment proceeding to adjudicate the fact issues regarding SPROC's revenues and expenses, the true cost of repairs necessary to make the line serviceable, and the economic effects of the proposed abandonment, including the amount of damages due Chemical Lime.

II. IDENTITY AND INTEREST OF CHEMICAL LIME

Chemical Lime, based in Fort Worth, Texas, manufactures lime from limestone, and provides lime-based products and services in plants throughout the United States. One of those plants is in Douglas, Arizona, near the Mexican border. SPROC delivers coal and coke to Chemical Lime's Douglas lime plant (the "Plant") via the Curtiss-to-Charleston and Charleston-to-Paul Spur rail segments.2 Both coal and coke are essential to Chemical Lime's manufacturing process, and without either one, the plant must be shut down.

In support of its request, Chemical Lime submits as Exhibit A the verified statement of Mark Juszli, Chemical Lime's Vice President of Business Development and Logistics ("Juszli").

As explained in the Juszli statement, SPROC informed Chemical Lime on March 22, 2005, of its intent to abandon the rail line in September 2005. Juszli at 2. SPROC maintains that it has "advised Chemical Lime of other transportation options including construction of a transload facility." Petition at 12. However, SPROC has never provided Chemical Lime with any concrete proposal to build such a facility, nor has it offered any financial assistance to construct this facility.3 Juszli at 2.

On June 6, 2005, when SPROC filed its original petition, Chemical Lime requested a written proposal from SPROC detailing SPROC's plans to offset Chemical Lime's financial damages. Juszli at 3. SPROC did not respond at all until June 30, and then provided only a token offer. Juszli at 3.

On July 22, 2005, five weeks after the cessation of its operations, SPROC made a written proposal to Chemical Lime. Juszli at 2. This proposal proved to be noncompetitive on total freight and handling costs with the transload facility at Deming, New Mexico that Chemical Lime has created on its own. Juszli at 2. Further, while it was suggested orally that SPROC may provide for financial assistance to construct the facility, SPROC required a multiyear commitment to provide the capital. Juszli at 2. The SPROC proposal, however, did not offer any financial assistance to offset the increased freight and handling costs that Chemical Lime would incur as a result of the proposed abandonment. Juszli at 3. Based on recent communications, SPROC does not appear to be pursuing the issue actively. Juszli at 2–3.

Chemical Lime strenuously opposes the abandonment of the two segments that are necessary to serve its plant and facilitate a transnational rail connection in the region. Chemical Lime's costs would rise significantly were SPROC to abandon the entire line. Juszli at 3–5. At SPROC's request, Chemical Lime invested significant funds in improving the SPROC tracks leading to Chemical Lime's Douglas Plant. Juszli at 1–2. In reliance on SPROC's proposal to provide continued rail service for the plant's fuel needs, Chemical Lime invested $1.47 million in re-opening the Douglas Plant. Juszli at 1–2. Chemical Lime also advanced funds to SPROC to maintain the rail line segments while Chemical Lime was re-opening the Douglas Plant. Juszli at 1–2. If SPROC is permitted to abandon the line, the harm to Chemical Lime will be greater than the alleged harm to SPROC (which Chemical Lime contests) of continuing service to the Douglas Plant.

III. ARGUMENT

A. The Exemption Procedure is Inappropriate Because Chemical Lime Relied On SPROC's Representations.

In business discussions prior to the reopening of the line, SPROC gave Chemical Lime every indication that it wanted Chemical Lime's business. Juszli at 1. SPROC first approached Chemical Lime to see what Chemical Lime's plans were for its idle Douglas Plant. Juszli at 1. When Chemical Lime indicated to SPROC that it desired to bring the plant back on line, SPROC insisted that Chemical Lime improve the SPROC tracks leading to the Plant. Juszli at 1. Chemical Lime paid a contractor $32,118 in 2004 to do so. Juszli at 2. Chemical Lime also provided cash payments totaling $22,500 to SPROC during 2004 to maintain the track. Juszli at 1. Chemical Lime spent $1.47 million bringing the Douglas Plant back into service. Juszli at 1. SPROC did not indicate until June 14, 2005, a week after it filed its original petition in this matter,4 that $500,000 to $600,000 in additional repairs would be needed to bring the line up to operating condition. Juszli at 1-2. If SPROC is permitted to abandon the line, all of the investment by Chemical Lime may be lost because the cost of alternative transportation arrangements by truck may make operation of the plant uneconomical.

This type of reliance has been taken into account by the Board in previous abandonment proceedings. For example, in Tulare Valley R.R. Co. – Abandonment and Discontinuance Exemption – In Tulare and Kern Counties, CA, STB Docket No AB-397 (Sub-No. 5X)(STB served Feb. 21, 1997) ("Tulare Valley"), the Board declared, "[m]oreover, the shipper has shown that it has made a recent, substantial investment in its facilities based on continued rail service and has raised significant doubts as to the availability of viable transportation alternatives."

Further, it is the policy of the Board to promote investment in rail services and to assure future shippers who would invest in rail lines by protecting current shipper investors. See, e.g., Texas and Pacific Ry Co. Abandonment Between San Martine and Rock House in Culberson County, Texas, 363 I.C.C. 666, 677 (Nov. 12, 1980), ("Culberson"). In that case, the STB stated:

> The limited interest of Elcor (the shipper) in being reimbursed pales in comparison to the possible effect this decision could have on the future willingness of shippers and other parties to negotiate with carriers for the construction of rail lines. We have acknowledged that there is a scarcity of resources available to invest in the rail industry. Without investment partners carriers may not be able to make all the desirable investments in rail operations that have the potential of bringing forth good returns. The public would be well served by the construction of new lines or rehabilitation of existing lines with

the aid of shipper-investors.

Permitting an exemption in this case would chill future rail investment and growth. Very few shippers would be willing to invest the kind of capital necessary to create and maintain the facilities required for the types of projects like the one at issue knowing that the rail service, and in fact the rail itself, could be unilaterally taken away in a little over a year, without any real scrutiny by the board. As it did in Culberson, the Board should consider "the impact on the entire rail industry" if a rail investor that has a strong interest in continuing service is deprived of that service by the unilateral decision of the owner of the line, and gets no compensation for its damages. Chemical Lime disputes SPROC's assertions regarding its alleged revenues and expenses.

In this case, there are genuine fact and policy issues for the Board to adjudicate, and an exemption proceeding is not the appropriate procedural vehicle to do so. The Board should deny the petition and conduct a full abandonment proceeding to fully and fairly assess the detrimental effects that the abandonment would have not only upon Chemical Lime's investment but also upon the future of rail investment.

B. The Exemption Is Inappropriate Because Chemical Lime Seeks Damages As a Result of SPROC's Improper Embargo

SPROC unilaterally shut down rail service on the subject line on June 16, 2005.5 This shutdown constitutes an impermissible embargo and a violation of SPROC's common carrier obligation to provide transportation service to shippers.

While embargoes may be permissible in certain cases, unreasonable embargoes are prohibited, and subject the carrier to liability for damages. "The reasonableness of an embargo is determined by a balancing test, taking into consideration such factors as the length of the service cessation, the carrier's intent, the cost of repairs, the line's traffic, volume and revenues, and the carrier's financial condition." Decatur County Comm'rs, v. Central R.R. Co. of Indiana STB Finance Docket No. 33386 (September 28, 2000). Usually, the reasonableness of an embargo centers on the length of the service interruption and the cost of repairs to cure the embargo. Overbrook Farmers Union Coop. Ass'n – Petition for Declaratory Order – Violation of 49 U.S.C. § 11101(a), 5 I.C.C. 2d 316, 322 (February 3, 1989) ("Overbrook Farmers").

In its petition, SPROC asserts that the embargo was necessary due to the condition of a bridge at milepost 11.3, and that it will cost $136,496 to repair the bridge. However, the assertions of SPROC's consultants have not been tested and can only be verified or rejected in the context of a full abandonment proceeding. If less costly repairs could have put the bridge in a sufficiently safe condition to allow shipments of coal and coke to Chemical Lime, then SPROC should have made those repairs, rather than instituting the embargo. The Board was confronted with similar facts in Louisiana Railcar, Inc. v. Missouri Pacific R.R. Co., 5 I.C.C. 2d 542, 1989 WL 238865, STB Finance Docket No. 31246 (June 21, 1989). In that case, in reviewing the reasonableness of an embargo, the Board found that the railroad did not need to make $308,000 in repairs to improve the line to Class I standards, as it had asserted, but only needed to make $18,002 in repairs to restore the line to the pre-embargo acceptable track standards.

In this case, Chemical Lime disputes SPROC's estimate of the costs of the necessary repairs, and requests that the true cost of the minimum repairs necessary to reinstitute service be resolved in a full abandonment proceeding. However, even if SPROC's estimates were accepted as correct, the cost of repairing this bridge is still significantly less than the losses suffered by Chemical Lime due to increased shipping costs as a result of the embargo. Juszli at 5–6. Based on the revenue SPROC would have received from Chemical Lime since June 16, it could have recouped almost all of its own estimate of the cost of repairs to the bridge, by the end of 2005, while avoiding causing damages to Chemical Lime. Juszli at 3–4. In view of the fact that the repairs, even at SPROC's estimated cost, would ultimately have been paid for by revenue derived from the continued operation of the line, SPROC has no justification for the embargo.

Since the line has been embargoed, Chemical Lime has been without rail service and has made repeated inquiries about restoration of service. On October 18, 2005, after the Board denied SPROC's June 6, 2005 petition for an exemption, Chemical Lime filed a formal service complaint and request for assistance with the Board. See Juszli at Attachment 1. In response, on October 19, 2005, the Board sent a letter to SPROC instructing it to meet with Chemical Lime to resolve the service issues. See Juszli at Attachment 2. SPROC failed to do so. Juszli at 4. Only after Chemical Lime initiated contact on November 10, 2005, did SPROC offer $75,000 in compensation. Juszli at 4. That sum represents a small fraction of Chemical Lime's losses and is a very small fraction of the profit that SPROC hopes to realize upon liquidating the line.6 Juszli at 4. Because of its past investment in the line, the damages caused by the improper embargo, and the damages that will be caused if the line is abandoned, Chemical Lime is entitled to share in the proceeds from any future liquidation. The amount of Chemical Lime's share can only be adjudicated in the context of a formal abandonment proceeding.

SPROC's actions violate the legal requirements governing common carriers as articulated in Overbrook Farmers Union Coop. Ass'n – Petition for Declaratory Order – Violation of 49 U.S.C. § 11101(a), 5 I.C.C. 2d 316 (February 3, 1989) (" Overbrook Farmers"). In Overbrook Farmers, the Board found that the Missouri Pacific Railroad Company ("Missouri Pacific") violated its common carrier obligation by not providing "direct rail service or some reasonable substitute" after Missouri Pacific instituted an embargo. Overbrook Farmers at 326. The Board found that Missouri Pacific also violated its common carrier obligation by not granting an allowance that would put its shipper in the same economic position as if it had provided rail service. Id.

Here, SPROC has made no serious attempt to provide a reasonable substitute or to restore Chemical Lime to the same economic position it was in prior to the embargo. SPROC has merely "advised" Chemical Line of potential alternatives to rail transport. Petition at 12. These alternatives have increased Chemical Line's transportation costs by almost 60%. Juszli at 4. To conduct a full review of the validity of SPROC's embargo and to adjudicate the amount of damages payable to Chemical Lime, the Board should deny the Petition and allow the parties an opportunity to present evidence and testimony and brief the issues in a full abandonment proceeding.

C. The Exemption Proceeding is an Inappropriate Vehicle to Prevent Abuses of Market Power

Not only has Chemical Lime suffered past damages due to the improper embargo, but it will also incur future damages due to increased shipping costs. Between June 14, 2005, when SPROC embargoed its line, and December 31, 2005

Chemical Lime will have incurred increased shipping costs for shipping coal and coke estimated to be in the amount of $438,392. Juzli at 5. This increase in cost has occurred due to the increased costs associated with transporting the materials by truck (from Hesperus, Colorado and Gallup, New Mexico) and by rail to a transload facility in Deming, New Mexico and then by truck again from Deming to the Chemical Lime facility in Douglas. Juszli at 4–5. From the time of the improper embargo until the Deming facility was operational, no coke was delivered to the Plant because Chemical Lime's closest provider is in Cheyenne, Wyoming, and it is not economically feasible to transport the coke by truck from that location. Juszli at 4. Once the Deming facility was functioning, Chemical Lime was able to replenish some of the deficient coke inventories. Juszli at 5. The costs associated with doing this, however, have been high. Juszli at 5. In addition, since the improper embargo, because it was forced to ship coal by truck from Hesperus, Colorado, Chemical Lime experienced a coal shortage. Juszli at 4. Chemical Lime has utilized the Deming facility to restore its coal inventories to normal operating levels. Juszli at 4. These mitigation efforts, however, have created a significant financial and operational burdens for Chemical Lime.

With the cessation of service by SPROC, Chemical Lime has been forced to turn to the only two trucking companies in the region that are capable of servicing Chemical Lime's needs. Juszli at 4. Douglas is in a remote area, and there are few competing carriers. Juszli at 4. In addition, the specialized nature of the cargo and high volumes required to meet Chemical Lime's needs prevent many potential truck carriers from competing for Chemical Lime's business. Juszli at 4.

In this case, as discussed above, SPROC compounded the market power problem for Chemical Lime by imposing an improper embargo and failing to meet its common carrier obligations. The absence of an effort on the part of SPROC to provide economically viable alternative transportation service, or to subsidize the increased costs incurred by Chemical Lime, endangers the financial viability of Chemical Lime's Douglas operation. The closing of the line by SPROC seriously limits the potential carriers available to Chemical Lime, subjecting Chemical Lime to potential abuses of market power. Because the abandonment would significantly increase the potential for abuse of market power, the Board should deny SPROC's Petition for Exemption and adjudicate the potential anti-competitive effects of the abandonment in a formal abandonment proceeding.

D. The Exemption Procedure Is Inappropriate For An Abandonment Request That Raises Free Trade Issues.

SPROC states that it acquired the rail segments in question in 2003 with the intent to use them to restore service from the United States to the Mexican rail system at Naco, Arizona. SPROC says, however, that it was not able to persuade the Mexican carrier, Ferromex, to restore the connection. Petition at 8. This assertion is based upon a single attempt by SPROC to negotiate with Ferromex and its owner, Union Pacific Railroad. See, e.g., Reply of San Pedro R.R. Operating Co., LLC to Verified Opposition of Sonora-Arizona Int'l, LLC, San Pedro R.R. Operating Co., LLC – Abandonment Exemption - in Cochise County, AZ STB Docket No. AB-441 (Sub. No. 4X). At the close of that negotiation, Ferromex concluded that it was not considering restoring transnational service between Mexico and the United States at Naco "at that time." See id. at Exhibit C. The tenor of Ferromex's correspondence did not indicate that the possibility of future service was foreclosed. In fact, it was quite the opposite. The Ferromex representative stated that other projects were a priority and that SPROC should "keep in touch and with an open mind to opportunities." See id. SPROC's failure in this particular instance to secure an agreement with Ferromex does not mean that such an agreement could never be reached. In the future, SPROC, or some other applicant, may wish to initiate cross-border service using the line that is presently in place.7

Now, SPROC wants to abandon its line and dismantle it to recover some value. If the track and associated equipment were liquidated, the cost of renewing service someday in the future would be substantially increased, and such renewal might ultimately be impossible. To allow SPROC to dismantle a rail line crossing the border into Mexico without any evidence in the record examining the international ramifications of such actions would disregard the Board's responsibility to promote the objectives of the North American Free Trade Agreement. See South Orient R.R. Co., Ltd – Abandonment, STB Docket No. AB-545 (STB served Oct. 5, 1998) ("We have also considered the legitimate concerns of protestant about the effect of an abandonment on the local communities, the larger region, and the free trade objectives of NAFTA. We are extremely concerned about maintaining adequate rail facilities and infrastructure. We are also mindful of our responsibility to ensure that our actions foster the goal of North American economic integration embodied in NAFTA."). Dismantling an existing, usable track that provides an opportunity for cross-border traffic with Mexico would contradict the goal of North American economic integration.

IV.CONCLUSION AND REQUESTED RELIEF

The proposed abandonment is highly contested, raising serious fact and policy issues. Chemical Lime has made significant contributions to the maintenance of the line in addition to substantial capital improvements to its own facility, all in reliance on SPROC's representations of continued service. In addition, in this case, as a result of SPROC's improper embargo, Chemical Lime has suffered substantial damages. Allowing an abandonment of the line may also subject Chemical Lime to market power abuses and would impede the free trade objectives of NAFTA.

A thorough review of the contested issues will require detailed revenue and cost analysis by the Board. As the Board has explained, these analyses are "generally reserved for the application process, which provides for a record building process and for Board analysis by requiring workpapers and other information needed to make an informed decision." Central R.R. Co. of Indiana – Abandonment Exemption, STB Docket No. AB-459 (Sub. No. 2X), page 12 (STB Served May 4, 1998). Because of the nature of the issues involved and the significant factual and legal determinations that the Board must make, this is not the type of case in which the Board should grant an exemption. Consequently, because this issues are not appropriate for resolution in this proceeding, Chemical Lime requests that the Petition for Exemption be denied.

Respectfully submitted,

RUSTY A. BREWER

JEFFREY M. BAUER

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Attorney for
Chemical Lime Company

Dated: November 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail.

November 29, 2005

Rusty A. Brewer

Jeffrey M. Bauer

1 SPROC received a letter dated June 10, 2005, from Edward W. Pritchard of the Federal Railroad Administration ("FRA") that recommended that SPROC cease operations on one bridge along the rail segments in question until it repaired the span. However, as the letter itself points out, the FRA does not have authority to order or authorize SPROC to cease operations. Only the Board can grant an abandonment request. SPROC could have made sufficient repairs to continue to operate the line while its abandonment request is pending. It should be ordered to do so immediately.

2 Chemical Lime does not object to SPROC's abandoning the Bisbee-Bisbee Junction and Paul Spur-Douglas segments, which are not necessary to serve its plant or complete a transnational connection at Naco, Arizona.

3 SPROC's offer of compensation is only slightly more than the amount Chemical Lime paid to SPROC to subsidize SPROC's repair of the rail line in 2004. SPROC's offer does not attempt to compensate Chemical Lime for construction of a transload facility or for its past, present, and future damages.

4 San Pedro Operating Company, LLC -- Abandonment Proceeding -- in Cochise County, AZ, STB Docket No. AB 441 (Sub-No. 4X).

5 During a June 14, 2005 conference call, SPROC unilaterally declared its intent to cease operations immediately. The embargo officially went into effect on June 16, 2005.

6 Chemical Lime strongly

contests the estimate of liquidation value offered by SPROC and requests that the Board determine the actual liquidation value and compare that value with Chemical Lime's future losses in a formal abandonment proceeding. Also, even if the Board were to find that SPROC's estimate is a realistic assessment of the line's liquidation value, the Board should consider Chemical Lime's reliance on SPROC's representations and Chemical Lime's investment and losses in apportioning the expected profit between the affected parties. <u>See, e.g., Texas and Pacific Ry Co. Abandonment Between San Martine and Rock House in Culberson County, Texas</u>, 363 I.C.C. 666, 678, 1980 WL 14104 (I.C.C.) (November 12, 1980) (awarding damages to the shipper from the liquidation of the rail line to reimburse the shipper for investments made in the continued operation of the line and to promote and encourage investment and construction in rail lines).

7 As a further reason for its exemption request, SPROC states that there are no other shippers on the line . . . that the prospects of attracting other customers to the line are poor . . . [and the] abandonment would have no adverse effect on rural and community development." However, in response to SPROC's June 6, 2005 petition for exemption, Sonora - Arizona International, LLC ("Sonora") filed a well-supported petition in opposition, outlining a number of potential commercial development projects on or near the rail line that SPROC wishes to abandon. In addition

to those, Sonora referenced a number of projects, both actual and potential, that could benefit from a transnational connection between the United States and Mexico using the SPROC line. It is evident from Sonora's filing that it, and other potential developers, have an interest in the continued operation of the SPROC line to support these projects, which may have beneficial impacts on the local communities. The Board should fully explore the viability of these potential projects in a full abandonment proceeding.

VERIFIED STATEMENT OF MARK JUSZLI
VICE PRESIDENT, BUSINESS DEVELOPMENT AND LOGISTICS
CHEMICAL LIME COMPANY

My name is Mark Juszli. I am Vice President of Business Development and Logistics for Chemical Lime Company ("Chemical Lime"). The following is my verified statement supporting Chemical Lime's Opposition to the Petition for Exemption to Abandon filed by the San Pedro Railroad Operating Company ("SPROC").

Chemical Lime closed its plant in Douglas, Arizona, in 2001, and reopened it in October 2004. Chemical Lime spent approximately $1.47 million to bring the plant back into service. It is now producing and shipping lime from the Douglas Plant. SPROC provides transportation service to the plant for both coal (at a rate of about 18,000 tons per year) and petroleum coke (at a rate of about 20,000 tons per year), which are used as fuels to fire the plant's lime kiln. Prior to the restart of the Douglas Plant in 2004, Chemical Lime discussed its planned coal and coke consumption rates with SPROC. Since the restart, Chemical Lime has operated the plant in accordance with the consumption rates it discussed with SPROC.

SPROC approached Chemical Lime in early 2004 regarding Chemical Lime's plans for the idle Douglas Plant. It was my understanding that, at that time, SPROC was trying to make decisions regarding the use of its own idle assets. In advance of the restart in October 2004, and at the request of SPROC, Chemical Lime made two financial contributions to the maintenance of the rail line to the Douglas Plant. On June 1, 2004, Chemical Lime agreed to pay SPROC $2,500 per month for the period from March 1, 2004 to December 31, 2004, to help maintain the SPROC line and to cover SPROC's financing costs until Chemical Lime reopened the Douglas Plant. Chemical Lime made nine payments of $2,500 each, for a total of $22,500.

SPROC also required that Chemical Lime pay for improvements to the tracks leading from the SPROC line into the Douglas Plant. Chemical Lime paid Mountain States Contracting $32,118 to clean the tracks of windblown sand, improve drainage, replace crossties, replace tie plates and spikes, add ballast, and level rail.

At the time it requested these financial commitments from Chemical Lime, SPROC did not indicate that any bridge repairs were necessary, or that the railroad was contemplating a request for abandonment. SPROC also did not indicate that the line's continued existence was contingent on SPROC's reaching agreement with Ferromex. To the contrary, in late 2004, after discussing the matter with SPROC Chairman David Parkinson and Chief Executive Officer John H. Dugan, Chemical Lime was optimistic about SPROC's health. This optimism was further confirmed by the comments of David Parkinson inProgressive Railroading magazine (attached hereto as Attachment A).

SPROC first informed Chemical Lime of its intent to file a petition to abandon on March 22, 2005, with a target abandonment date of September 2005. SPROC offered to work with Chemical Lime in building a transload facility in nearby Curtiss, Arizona, to move coal and coke from trains to trucks for transportation to the Douglas Plant. SPROC failed to tender a proposal, however, until July 22, 2005, five weeks after the cessation of its operations. The tendered proposal did not include financial assistance to construct the facility. It was suggested verbally that SPROC would provide some capital for the facility if Chemical Lime made a multiyear commitment. Regardless, the proposal ultimately proved to be noncompetitive on total freight and handling costs when compared to the Deming, New Mexico transload alternative designed and financed by Chemical Lime. At no time has SPROC provided a written offer of financial assistance to construct this transload facility.

While Chemical Lime has proceeded with the Deming, New Mexico transload facility, this alternative has significant commercial uncertainties because BNSF, the principal carrier (the transload site is located on the Southwestern Railroad, a shortline which interchanges with BNSF at Deming), has indicated that it may seek to abandon rail service from Rincon, New Mexico to Deming. If the potential abandonment were to be approved, making the Deming alternative noncompetitive, Chemical Lime would face the prospect of transloading in El Paso, Texas, at a much greater distance. Clearly, the costs associated with transloading in El Paso would be much higher than those associated with transloading in Deming due to increased truck freight distances. In its proposal, SPROC failed to offer any subsidy to Chemical Lime for the increased freight and handling costs due to the proposed abandonment.

On June 6, 2005, Chemical Lime requested a proposal from SPROC as to how it would offset Chemical Lime's financial damages and keep Chemical Lime whole as to the increase of the delivered cost of coal and coke. On June 30, 2005, SPROC offered Chemical Lime $50,000 if Chemical Lime would agree not to oppose its petition for an exemption. That amount is a small fraction of Chemical Lime's increased costs.

During a June 14, 2005, teleconference, SPROC unilaterally declared its intent to cease operations immediately, asserting that the rail line required about $140,000 in bridge repairs and other repairs totaling between

$500,000 and $600,000. This was the first Chemical Lime had heard of any such repairs being necessary. At that time, SPROC ceased providing rail service to Chemical Lime. Chemical Lime estimates that if SPROC had made the bridge repairs it claims are needed, and continued providing rail service for the time since the cessation of service, it would have received $133,900 in revenue. This amount almost completely offsets the bridge expenses claimed.

Since that date, Chemical Lime has made repeated requests to SPROC to restore service. These requests were denied. SPROC's unwillingness to restore rail service, even after the Surface Transportation Board ("Board") denied SPROC's June 6, 2005 petition for exemption to abandon, forced Chemical Lime to file a formal service complaint and request for assistance with the Board on October 18, 2005. In a letter to SPROC dated October 19, 2005, the Board requested that SPROC meet with Chemical Lime to resolve these service issues. Copies of those letters are attached. SPROC failed to contact Chemical Lime within the 10 day period required by the Board, and no meeting ever occurred. Having heard nothing from SPROC since the Board's letter, Chemical Lime contacted SPROC on November 10, 2005. This resulted in an oral offer by SPROC of $75,000, a small fraction of Chemical Lime's increased costs.

The Deming transload facility was put into operation on August 23, 2005. Prior to that date, Chemical Lime was forced to transport coal by truck from Hesperus, Colorado and Gallup, New Mexico to Douglas, Arizona at an average transportation cost of $88.17 per ton (the costs differ from Hesperus and from Gallup, but average $88.17). This figure included some backhauls which were difficult for Chemical Lime to organize and manage. In contrast, Chemical Lime paid $50.57 per ton in transportation costs for hauling coal by rail prior to SPROC's cessation of operations. Deming is located in a remote area where only two trucking companies can serve the needs of Chemical Lime. Because of the specialized nature of the materials and the high volumes required, many truck carriers cannot compete for Chemical Lime's business. Since there were only limited trucks available for these long distance hauls, only 1138 tons of coal were transported to Douglas during the 10 week period between SPROC's cessation of operations and the Deming start up. This left Chemical Lime with a coal shortage at its Douglas plant, which it has been restoring to normal operating levels through the Deming facility. However, the freight and handling costs associated with restoring the depleted coal inventories through Deming are much higher than if SPROC had continued to operate.

Additionally, no coke, an essential material to Chemical Lime's manufacturing process, was delivered from the time SPROC ceased operations until the Deming facility was operational, because the coke provider is located in Cheyenne, Wyoming. The cost differential to transport coke by truck rather than rail is estimated to be $60.53 per ton. By the time the Deming facility was operational, coke inventories had reached a critical level. Since that time, Chemical Lime has been restoring coke inventories to normal operating levels. However, the freight and handling costs associated with this process are much higher than if SPROC had continued to operate. Chemical Lime constantly canvasses the coke market and has not identified any suppliers closer to Douglas than Cheyenne. The other suppliers that serve the intermountain Western U.S. are in Montana, Kansas, and East Texas.

Chemical Lime's losses in 2005 alone are estimated to be:

1.	Cash investment in rail spur improvements	$31,118
2.	Nine cash payments to SPROC of $2500	$22,500
3.	Startup costs at Deming (site lease and prep, car shaker)	$33,300
4.	6/15 to 10/21 transport of coal/coke incl. demurrage	$160,819
5.	10/21 to 12/31 transport of coal/coke incl. demurrage (prorated)	$32,757
6,	Transport of coal/coke incl. demurrage to restore inventories	$157,898
	Total 2005	$438,3921

If Chemical Lime continues to sustain losses of this magnitude, unless rail service is resumed, or some alternative transportation arrangement can be agreed upon, Chemical Lime may be forced to close its Douglas Plant again, losing $1.47 million in startup costs. In 2001, when SPROC's previous owners filed a petition for an abandonment exemption, Chemical Lime did not file an opposition, because the Douglas Plant was shut down due to weakness in demand caused by soft copper markets, and Chemical Lime was unable to predict when the market might improve. Because the plant was closed during 2001, Chemical Lime received no coal or coke between 2001 and the preparations to restart the plant in September-October 2004. Since then, Chemical Lime has been taking delivery of coal at the rate of 18,000 tons per year (180 carloads per year) and coke at the rate of 20,000 tons per year level (200 carloads per year).2

The Douglas Plant is budgeted for 15 hourly and 11 salaried employees. Chemical Lime expects about the same staffing levels, with some possible additions, over the next few years. Annual payroll, including fringe benefits, is about $1.3 million. Chemical Lime pays approximately $80,000 per year in property taxes on the Douglas Plant. Chemical Lime also employs a contract miner at Douglas, who currently employs about 18 to 20 people in the mining operation.3

Of the four segments SPROC proposes to abandon -- Curtiss to Charleston, Charleston to Paul Spur, Paul Spur to Douglas, and Bisbee to Bisbee Junction -- Chemical Lime is only affected by the Curtiss to Charleston and Charleston to Paul Spur segments, because the plant is at Paul Spur. Chemical Lime does not object to SPROC's abandoning the Bisbee-Bisbee Junction and Paul Spur-Douglas segments.

MARK JUSZLI

Vice President
Business Development and Logistics

DC01:421358.4

VERIFICATION

STATE OF

CITY OF

Mark Juszli, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.

Subscribed and sworn to before me, a Notary Public, in and for the City of

in the State of , this day of

, 2005.

Notary Public

My Commission expires:

____

1 In the Verified Statement of Mark Juszli of July 14, 2005, project 2005 damages were estimated to be $907,780. The current estimate of $438,392 reflects two efforts that Chemical Lime has made since July to mitigate its damages. First, Chemical Lime was successful in permitting and developing the Deming transload facility. The July 14 estimate did not reflect the transportation economics of Deming, the viability of which was uncertain at that time. Second, Chemical Lime has been able to develop lime hauls into southwestern New Mexico which allow approximately 65% of the coal and coke transloaded at Deming to be hauled to Douglas at backhaul truck rates. Backhaul economics were also not reflected in the July 14 estimate, as they also were viewed as uncertain at that time.

2 In 2004, Chemical Lime received 82 carloads of coal and coke. From January 1 to May 15, 2005, Chemical Lime received 146 carloads. From May 15 until the last car was received on June 13, just prior to SPROC's unilateral cessation of operations on June 16, Chemical Lime received 41 carloads.

3 The forgoing assumes that Chemical Lime will continue to operate only one of its kilns at the Douglas plant. If Chemical Lime were to restart a second kiln at Douglas, employment and payroll would be increased in addition to an obvious increase in coal and coke requirements.

Formal Filing

Docket #: ☒ AB -1081 -0 - ☒ X

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- Public_DC01-#431132-v4-November Opposition to Exemption of Abandonment.DOC

- Public_DC01-#421358-v4-Statement of Mark Juszli.DOC